

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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JANE DOE, et al.

Plaintiffs

v.

SCHUYLKILL COUNTY, et al.,

Defendants

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No. 3:21-cv-00477

Jury Trial Demanded

**DEFENDANTS', SCHUYLKILL COUNTY AND GARY BENDER  
MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendants, Schuylkill County and Gary Bender, move this Court pursuant to Federal Rules of Civil Procedure 8, 10 and 12(b)(6) to dismiss the Second Amended Complaint filed by Plaintiffs (Doc 63) in the above-captioned matter. For the reasons set forth below and within moving Defendants' brief in support, which will be filed pursuant to Local Rule 7.5, moving Defendants respectfully ask this Court to dismiss the amended complaint with prejudice, tax all costs and attorneys' fees to plaintiffs, and provide all other just and proper relief. Defendants, in support thereof, aver the following:

1. Plaintiffs have filed this matter under Title VII, Section 1983, the Pennsylvania Human Relations Act and at least one Pennsylvania common law claim.

2. Plaintiffs filed their original complaint (Doc 1), which four anonymous Schuylkill County employees (stylized as “Jane Doe 1-4”) asserted various counts of violations of Title VII *inter alia*, against four Defendants named within the caption, namely Schuylkill County, Gary Bender, Glenn Roth and George Halcovage.
3. All Defendants filed Motions to Dismiss to the original complaint (Doc 1); however, the parties stipulated to the filing of an Amended Complaint (Doc 20) and a second amended complaint (Doc 63).
4. Plaintiffs have amended their complaint (Doc 63) and asserted substantially similar claims, again using pseudonyms, against “Schuylkill” (sic) County (hereinafter “SC”), George Halcovage, Glenn Roth, Gary Bender, Heidi Zula and Doreen Kutzler.
5. Defendants, SC and Bender move this Honorable Court to dismiss the second amended complaint (Doc 63) for the reasons stated hereunder as well as the reasons set forth in the accompanying brief, which will be filed pursuant to Local Rule 7.5.
6. Plaintiffs’ case must be dismissed pursuant to Fed. R. Civ.P. 10(a) for failure to identify the Plaintiff. Plaintiffs did not seek prior approval of court for a Jane Doe designation.

7. Plaintiffs fail to state causes of action for intentional torts under common law.
8. Plaintiffs fail to properly state claims upon which relief can be granted under Fed. R. Civ. P 12(b)(6) regarding their Title VII claims for discrimination, hostile work environment and retaliation (Counts 1-3) as well as similar state law claims (Counts 5-7).
9. Plaintiffs fail to properly state claims upon which relief can be granted under Fed. R. Civ. P 12(b)(6) regarding their Section 1983 claims for discrimination, hostile work environment and retaliation (Counts 1-3) as well as similar state law claims (Counts 5-7).
10. Defendant Bender should be dismissed regarding state claims for discrimination (Counts 5 and 6) as there is no individual liability for discrimination under the PHRA.
11. Defendants SC and Bender should be dismissed regarding all counts related to claims under the PHRA (Counts 5-7) as Plaintiffs have failed to set forth any legal liability for these claims even under the liberal Twombly/Iqbal construct.
12. Further, Defendants SC and Bender seek to strike any demand for punitive and liquidated damages within Plaintiffs' omnibus prayer for

relief due to the fact that those damages are improper as to the municipal defendant as set forth more fully in the accompanying brief.

13. Defendants reserve the right to present additional arguments for Motion to Dismiss in its brief in support of Motion to Dismiss to be filed pursuant to Local Rule 7.5.

Respectfully submitted,

**THOMAS, THOMAS & HAFFER LLP**

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County and Gary Bender*

### **CERTIFICATE OF CONCURRENCE**

In accordance with Local Rule 7.1, moving Defendants have sought concurrence from counsel for all parties with regard to this motion to dismiss. Counsel for Plaintiffs does not concur. Counsel for Defendants do concur in this motion.

**THOMAS, THOMAS & HAFFER LLP**

By: /s/ Christopher L. Scott

**CERTIFICATE OF SERVICE**

I certify that on this 18<sup>th</sup> day of November 2021, the foregoing document was served via ECF, upon all counsel.

**THOMAS, THOMAS & HAFFER LLP**

Date: 11/18/21

By: /s/ Christopher L. Scott